

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KRISTEN ERWIN,

Plaintiff,

v.

DEFENSE HEALTH AGENCY,

Defendant.

No. 2:24-cv-2126 DJC AC

SECOND ORDER TO SHOW CAUSE

Plaintiff, appearing in pro se, filed a complaint and paid the filing fee on August 7, 2024. ECF No. 1. The same day, a summons and scheduling order was issued ordering the plaintiff to serve a copy of the scheduling order and complete service of process within 90 days of filing the complaint. ECF Nos. 2, 3. Plaintiff was cautioned that failure to complete service within 90 days may result in dismissal pursuant to Fed. R. Civ. P. 40(m). Id. On August 19, 2024, plaintiff filed an affidavit of service. ECF No. 4. The affidavit indicated that indicated that Patriot Process Service served a paralegal at the Office of General Counsel for the Defense Health Agency at 7700 Arlington Blvd. in Falls Church, Virginia. ECF No. 4 at 2.

On December 11, 2024, the undersigned issued an Order to Show Cause explaining to plaintiff that her proof of service did not demonstrate that service has been properly completed. ECF No. 8. The court explained that Federal Rule of Civil Procedure 4(i) outlines the rule for serving the United States, as well as its agencies and employees. The Rule requires a plaintiff to

1 take three steps:

2 (A)(i) deliver a copy of the summons and of the complaint to the
3 United States attorney for the district where the action is brought—
4 or to an assistant United States attorney or clerical employee whom
5 the United States attorney designates in a writing filed with the court
6 clerk—or (ii) send a copy of each by registered or certified mail to
7 the civil-process clerk at the United States attorney’s office;

8 (B) send a copy of each by registered or certified mail to the Attorney
9 General of the United States at Washington, D.C.; and

10 (C) if the action challenges an order of a nonparty agency or officer
11 of the United States, send a copy of each by registered or certified
12 mail to the agency or officer.

13 Fed. R. Civ. P. 4(i)(1). The Attorney General has designated the Assistant Attorney General for
14 Administration, Justice Management Division, to accept service of summonses and complaints.

15 28 C.F.R. § 0.77(j). The U.S. Department of Justice is located at 950 Pennsylvania Avenue, NW,
16 Washington, DC 20530-0001. Additionally, to sue a United States Agency such as the Defense
17 Health Agency, “a party must serve the United States *and also* send a copy of the summons and
18 of the complaint by registered or certified mail to the agency, corporation, officer, or employee.”
19 Fed. R. Civ. P. 4(i)(2) (emphasis added).

20 Plaintiff was ordered to properly complete service and file a notice to the court
21 demonstrating that service was completed. On December 30, 2024, plaintiff responded to the
22 order to show cause. ECF No. 9. Plaintiff asked the court not to dismiss the case and stated that
23 she “attached proof of proper service of defendants.” *Id.* at 1. However, plaintiff also stated that
24 she hired a process server who has been unable to serve the Department of Justice. *Id.* Plaintiff
25 stated she purchased reference materials in order to help her prosecute this case. *Id.* at 2.


26 While the court appreciates the difficulty of appearing in pro se, this case cannot proceed
27 if defendant is not properly served. Plaintiff’s response to the first Order to Show Cause does not
28 demonstrate that she has properly completed service in accordance with the instructions in Rule
4(i). In light of plaintiff’s pro se status, the court will give plaintiff a final opportunity to properly
complete service. Plaintiff is ORDERED to properly complete service in the manner described
above within 14 days of this Order. Plaintiff must file a notice with the court affirming that
service has been properly completed. Local Rule 110 provides that failure to comply with court

orders or the Local Rules may be grounds for imposition of any and all sanctions authorized by statute or Rule or within the inherent power of the Court.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff is Ordered to Show Cause, in writing no later than February 27, 2025, why this action should not be dismissed for failure to prosecute;
2. Plaintiff's filing of proper proofs of service upon defendants will be deemed good cause shown; and
3. If plaintiff fails to comply with this order, the case will be dismissed without prejudice for failure to prosecute.

DATED: February 13, 2025


ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE